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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,953	09/29/2003	Gregory D. Dietz	1792.001US1	5273

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LEMAIRE PATENT LAW FIRM, P.L.L.C.

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EXAMINER

JOHNSON, STEPHEN

ART UNIT

PAPER NUMBER

3641

MAIL DATE

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08/15/2007

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/674,953

**Applicant(s)**

DIETZ, GREGORY D.

**Examiner**

Stephen M. Johnson

**Art Unit**

3641

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 17-28 is/are pending in the application.  
4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.  
5) ☒ Claim(s) 2, 13-15, 17, 18 and 23-27 is/are allowed.  
6) ☒ Claim(s) 1, 3-5, 10-12, 19-22 and 28 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☒ Claim(s) 1-15 and 17-28 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

1. Applicant's election with traverse of species D (figs. 12, 14, 15, and 16) in the reply filed on 5/6/2005 is acknowledged.

Claims 6-9 are withdrawn from consideration as being directed to non-elected species. Claims 1-5 and 10-28 read on the elected species and an action on these claims follows.

2. Claims 1, 3-5, 10-12, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, applicant claims "both along a first direction that extends from the centerline of the gun barrel". Note that the first direction does not extend from the centerline of the gun barrel but rather from a point located adjacent the top of the firearm (see figs. 1 and 37-40). Claim 11 is indefinite for like reasons.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Pohl (553).

Pohl (553) discloses a gun sight comprising:

- |   |  |
|---|--|
| a) a first larger sight indicator;                  | 14   |
| b) a second smaller sight indicator;                | the 2 openings between<br>15 and 17 (see fig. 3) |
| c) indicators with substantially enclosed outlines; | 14, opening between 15, 15                       |

- |  |   |
|--|---|
| d) a non-telescopic sight;                                   | see fig. 1                                    |
| e) compensation for motion of target;                        | page 1, lines 14-19                           |
| f) compensation for a distance to the target;                | page 1, lines 105-111;<br>page 2, lines 31-40 |
| g) a gun barrel; and   | 5, 6  |
| h) means for removably attaching the gun sight to a firearm. | page 1, lines 48-70                           |

5. Applicant's arguments are addressed as follows. Applicant makes several arguments directed to openings 15 and 17, please note that the Pohl rejection (in view of applicant's amendments to claim 1) is directed to opening 14 and the opening between openings 15 and 17 as illustrated in fig. 3. Applicant makes numerous arguments directed to the intended usage of the Pohl openings. However, note that what applicant has claimed is "configured to aim" and "configured to be further from the centerline of the gun barrel". As such, there is no requirement that these openings be used in the same way applicant is using the openings. All that is required to meet the claim language is that the openings be in the appropriate configuration and location to perform these functions. Such is clearly the case as illustrated in fig. 3.

With regard to claim 4, note that opening 17 is not an issue, but rather opening 14 and the opening intermediate 15 and 17 located on either side of 17. With regard to the issue of opening 14, since opening 14 is located both above the barrel and to the side of the barrel, it is **configured to compensate for** both target motion and distance to the target. Further, note that the opening is intended to compensate for distance. In this case, the sight is arranged to compensate for the distance to the ridge. Also note that since the opening 14 is located toward

the side of the gun barrel, it must inherently compensate for both windage as well as target motion.

With regard to claim 19, opening 14 and openings between 15 and 17 meet the claim limitations directed to the means-plus-function language. With regard to the issue of distance to the object being up to the judgement of the marksman, while this may be accurate for some of the openings clearly the openings specified by the examiner are of different sizes. These different sizes inherently acquire targets of different distances from the firearm. Further, these openings are located such that they could certainly be used for different size objects. As such, these portions of Pohl must inherently perform the claimed “means plus function” limitations. Further, note claim 22 were applicant specifically recites what is meant by the phrase “means on the gun sight for sighting a target”. Clearly the openings of Pohl as described are “different-sized indicator means”.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pohl (553) in view of Castilla (583).

Pohl (553) applies as previously recited. However, undisclosed is a gun sight composed of a transparent substrate. Castilla (583) teaches a gun sight composed of a transparent substrate (col. 2, lines 40-42). Applicant is substituting one material type of gun sight material for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at

the time of the invention to apply the teachings of Castilla to the Pohl gun sight and associated method and have a gun sight that is composed of a particular material type.

8. Applicant's arguments are addressed as follows. Applicant's arguments appear to be directed to features that are taught by Pohl and not Castilla. These arguments have already been addressed in paragraph 5 above. Castilla is only being relied upon to teach a gun sight that is of a particular material type (transparent substrate).

9. Claims 2, 13-15, 17-18, and 23-27 are allowed.

10. Claims 3, 5, 11, and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is ([Stephen.Johnson@uspto.gov](mailto:Stephen.Johnson@uspto.gov)). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

/Stephen M. Johnson/  
Primary Examiner, Art Unit 3641

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

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SMJ

August 13, 2007